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OFFICE OF PETITIONS

In re Application of
Tsuji, et al.
Application No. 09/220,691
Filed: 28 December, 1998
Attorney Docket No. 0327-0759-0

ON PETITION

This is a decision on the petition to Withdraw the Holding of Abandonment properly considered as a request under 37 C.F.R. §1.181.¹

The petition under 37 C.F.R. §1.181 is **GRANTED**.

BACKGROUND

A review of the record reveals that:

- the Notice of Allowance and Issue Fee Due was mailed in this application on 1 November, 2001, with response due on or before 1 February, 2002, under a non-extendable statutory deadline;
- instant application was filed on 28 August, 2000;
- the Issue Fee was not paid, and the application went abandoned after midnight 1 February, 2002;
- Petitioner has evidenced that he filed on 1 February, 2002, a request for continued examination (RCE) with fee and submission--and the application file now contains those

The regulations at 37 C.F.R. §1.181 provide, in pertinent part:

§1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any action or requirement of any examiner in the *ex parte* prosecution of an application which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court; (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. ***

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Brief or memorandum, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declaration (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, it may be required that there have been a proper request for reconsideration (§1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his decision upon the matters averred in the petition, supplying a copy thereof to the petitioner.

If there is a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed. ***

(d) Except as otherwise provided in these rules, any such petition not filed within 2 months from the action complained of, may be dismissed as untimely. The mere filing of a petition will not stay the period for reply to an Examiner's action which may be running against an application, nor act as a stay of other proceedings. ***

Documents--as his response to the Notice of Allowance and Issue Fee Due;

- Notice of Abandonment was mailed on 29 April, 2002;
- the instant petition was filed with a statement by Petitioner and copies of the RCE and submission

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.²

Accordingly, in view of the record:

- the petition to withdraw the Holding of Abandonment is **granted**;
- the holding of Abandonment is **withdrawn**;
- the Notice of Abandonment of 29 April, 2002, hereby is **vacated**; and
- the petition fee is **waived**.

This application is being forwarded to Technology Center 1600 for further processing as to the RCE.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9190.



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for Patent Examination Policy

²See Delgany-Schulyer, 172 USPQ 513 (D.D.C. 1971).